

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

IN RE VITAMINS ANTITRUST LITIGATION)

This filing relates to:)

LIVENGOOD FEEDS, INC., et al.,)

Plaintiffs.)

- against -)

MERCK KGaA., et al.,)

Defendants.)

Misc. No. 99-197 (TFH)
MDL No. 1285

FILED

JAN 15 2003

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

**FINAL ORDER APPROVING SETTLEMENT WITH E. MERCK,
MERCK KGaA AND EM INDUSTRIES, INC. AND FINAL JUDGMENT**

This Court having considered plaintiffs' motion for final approval of the settlement agreement entered into as of August 9, 2002 on behalf of plaintiffs and the Vitamin Products Class (as defined in this Court's Orders of February 25, 2002, and September 16, 2002) by Plaintiffs' Co-Lead Counsel and by E. Merck, Merck KGaA, and EM Industries, Inc. (the "Settling Defendants"), by their counsel, and the exhibits attached thereto (the "Settlement Agreement," a copy of which is attached hereto as Exhibit 1); having considered all of the submissions and arguments with respect to plaintiffs' motion; having entered orders on February 25, 2002, and September 16, 2002, certifying the following class:

All persons or entities who directly purchased vitamins A, C, E, B1, B2, B3, B5, B6, B9, B12, H, beta carotene, astaxanthin, canthaxanthin and vitamins premixes for delivery in the United States from any of the Defendants or their co-conspirators from January 1, 1990 through September 30, 1998. Excluded from the class are all governmental entities, Defendants, their co-conspirators, and their respective subsidiaries and affiliates;

having directed that notice be given to potential members of the Vitamin Products Class of the proposed settlement and of a hearing scheduled to determine whether the proposed settlement should be approved as fair, reasonable, and adequate to the Vitamin Products Class and to hear any objections to any of these matters (the "Settlement Hearing"); and having held the Settlement Hearing and considered the submissions and arguments made in connection therewith, the Court hereby FINDS:

1. That the notice to members of the Vitamin Products Class required by Fed. R. Civ. P. 23(e), including but not limited to the forms of notice and the means of identifying and giving notice to members of the Vitamin Products Class, has been given in an adequate and sufficient manner and constitutes the best notice practicable, complying in all respects with such rule and the requirements of due process.

2. That the Court has held a hearing to consider the fairness, reasonableness and adequacy of the proposed settlement, has been advised of any objections to the settlement and has given fair consideration to any such objections.

3. That arm's length negotiations have taken place in good faith between Plaintiffs' Co-Lead Counsel and the Settling Defendants and have resulted in the proposed settlement, as provided in the Settlement Agreement.

4. That the settlement, as provided for by the Settlement Agreement, is in all respects fair, reasonable, and adequate and in the best interests of the Vitamin Products Class; that the settlement is accordingly finally APPROVED pursuant to Fed. R. Civ. P. 23(e); and that, in accordance with the terms of the Settlement Agreement, which are hereby incorporated by reference as though fully set forth herein; it is hereby ORDERED, ADJUDGED and DECREED:

(a) That all claims in the captioned action against the Settling Defendants are hereby dismissed with prejudice;

(b) That the Releasees, as defined in the Settlement Agreement, shall be released and forever discharged from all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, damages whenever incurred, liabilities of any nature whatsoever, including without limitation costs, expenses, penalties and attorneys' fees, known or unknown, suspected or unsuspected, asserted or unasserted, in law or equity, which Releasors or any of them, whether directly, representatively, derivatively or in any other capacity, ever had, now have or hereafter can, shall or may have, relating in any way to any conduct prior to the date hereof concerning the purchase, sale or pricing of Vitamin Products or relating to any conduct alleged in the Class Action, including, without limitation, any such claims which have been asserted or could have been asserted in the Class Action against the Releasees or any of them except that this release shall not affect the rights of Releasors or any of them (i) to seek damages or other relief from any person with respect to any Vitamin Products purchased directly from the manufacturer (or any subsidiary or affiliate thereof) outside the United States for delivery to a destination outside the United States; or (ii) to participate in or benefit from any relief or other recovery as part of a settlement or judgment on behalf of a class of indirect purchasers of Vitamin Products;

(c) That the foregoing release shall not release any product liability or breach of contract claims unrelated to the subject matter of the Class Action;

(d) That no member of the Vitamin Products Class shall hereafter be permitted in any suit, action, or proceeding to dispute or seek to establish liability against any Releasees;

(e) That, in addition to the provisions of subparagraphs (b), (c), and (d) of this paragraph, each Vitamin Products Class Member is hereby deemed expressly to have waived and released, with respect to the Released Claims, any and all provisions, rights and benefits conferred by (a) § 1542 of the California Civil Code, which reads:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release. which if known by him must have materially affected his settlement with the debtor.

and (b) any similar state, federal or other law, rule or regulation or principle of common law.

Each Vitamin Products Class Member may hereafter discover facts other than or different from those that it knows or believes to be true with respect to the subject matter of the Released Claims, but each Vitamin Products Class Member as a Releasor shall hereby be deemed to have waived and fully, finally and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, contingent or non-contingent claim with respect to the Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such other or different facts;

(f) That for a period of five years, the Clerk of the Court shall preserve a record of those potential members of the Vitamin Products Class that have timely excluded themselves from the Vitamin Products Class and shall provide a certified copy of such records to Settling Defendants at their expense;

(g) That nothing in this Order and Judgment or the Settlement Agreement and no aspect of the settlement or the negotiation thereof is or shall be deemed or construed to be an admission or concession or evidence of any violation of any statute or law or of any liability or wrongdoing by Settling Defendants or of the truth of any of the claims or allegations contained in the complaint in the Class Action or any other pleading or of the propriety of certifying a class

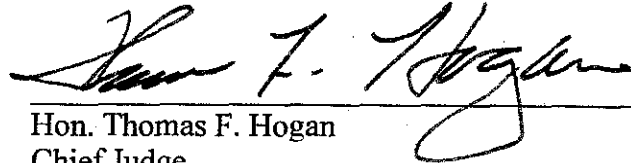
of any direct or indirect purchasers of Vitamin Products other than the Vitamin Products Class, and evidence thereof shall not be discoverable or used, directly or indirectly, in any way, whether in the Class Action or in any other action or proceeding; and

(h) That there is no just reason for delay of entry of a final judgment of dismissal with prejudice as to the Settling Defendants, and that, pursuant to Fed. R. Civ. P. 54(b), the Clerk is therefore directed to enter this judgment, which shall be final and appealable.

5. Without affecting the finality of this Order and Judgment, the Court hereby retains jurisdiction of this settlement and the Settlement Agreement, including the administration and consummation of the settlement and the determination of issues relating to attorneys' fees and expenses and distribution to the members of the Vitamin Products Class, and further retains exclusive jurisdiction for purposes of any suit, action or proceeding arising out of or relating in any way to this Order and Judgment, the settlement, the Settlement Agreement and/or the applicability of the Settlement Agreement, and the Settling Defendants and each member of the Vitamin Products Class shall hereby be deemed to have consented to such exclusive jurisdiction of the Court for such purposes. Without limiting the generality of the foregoing, any dispute concerning the provisions of paragraphs 4(b), (c), (d) or (e) of this Order and Judgment, including but not limited to any suit, action or proceeding in which the provisions of paragraphs 4(b), (c), (d) or (e) are asserted as a defense in whole or in part to any claim or cause of action asserted by any plaintiff or otherwise raised as an objection, shall constitute a suit, action or proceeding arising out of or relating to this Order and Judgment. Solely for purposes of any such suit, action or proceeding, to the fullest extent possible under applicable law, the Settling Defendants and the members of the Vitamin Products Class are deemed to have irrevocably waived and to have agreed not to assert, whether by way of motion, as a defense or otherwise,

any claim, argument or objection that they are not subject to the jurisdiction of this Court or that this Court is in any way an improper venue or an inconvenient forum.

6. Terms used in this Order and Judgment that are defined in the Settlement Agreement are, unless otherwise defined herein, used in this Order and Judgment as defined in the Settlement Agreement.



Hon. Thomas F. Hogan
Chief Judge
United States District Court
Washington, D.C.

Dated:  15, 2003